

## STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 North French Street, 1 1th Floor WILMINGTON, DELAWARE 19801

NORMAN A. BARRON CHIEF MAGISTRATE TELEPHONE: (302) 571-2485

## POLICY DIRECTIVE 80-028

TO:

ALL JUSTICES OF THE PEACE

STATE OF DELAWARE

FROM:

NORMAN A. BARRON

CHIEF MAGISTRATE

DATE:

NOVEMBER 25, 1980

RE:

CIVIL COURT ORDERS WHICH AFFECT COURT PERSONNEL IN OTHER

COUNTIES

When you have an occasion to frame a Civil Court Order which affects Justice of the Peace Court personnel in another County, I request that said Order be forwarded through the Deputy Chief Magistrate of the County affected. Thus, should you order a wage attachment to be made against a defendant whose employer is located in a County other than the County in which you sit, the papers should be forwarded to the Deputy Chief Magistrate of the County in which the defendant's employer is located. The Deputy Chief Magistrate of the County affected will forward said papers to a Constable under his jurisdiction for service, unless a question is raised in regard thereto, in which case the Deputy Chief Magistrate will not act until satisfied that the action contemplated is permissible.

§ 9575(a) has any relevance to current motion practice in Superior Court, it is inapplicable to a dismissal for want of jurisdiction as distinguished from a dismissal for lack of a proper party to prosecute an appeal.

Finally, there is no mcrit to surety's remaining contention that a judgment must first be entered against him in the Justice of the Peace Court before execution can issue. A. Gordon Bayly, as surety, became equally liable for Robert A. Bayly's judgment upon his execution of the court's papers as surety. While entry of a judgment in Superior Court against surety would be required for execution process to issue out of that court against surety, \$ 9574(a) imposes no such condition on execution of the Justice of the Peace against the surety. See Woolley, supra, \$ 1420.

Notwithstanding the foregoing, it seems fairly clear that remedial legislation with respect to 10 <u>Del. C</u>. \$\$ 9572 through 9575 would be in the interest of justice.

Affirmed.

This Directive is intended to promote uniformity of procedure within our Court system.

NAB:pm

cc: The Honorable Daniel L. Herrmann
John R. Fisher, Esquire
Arthur R. Carello, Court Administrator
Thomas W. Nagle, Administrative Officer I
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